

**TITLE 3-A
BUSINESS AND CORPORATE REGULATION COMMISSION
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TITLE 3-A
BUSINESS AND CORPORATE REGULATION COMMISSION

CHAPTER ONE
GENERAL PROVISIONS

Section 101. Title.

This Act shall be known as the Business and corporate Regulation Code of the Seminole Nation of Oklahoma.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992].

Section 102. Findings.

The General Council finds that:

(a) Under the Constitution of the Seminole Nation, the General Council may legislate upon matters to become laws of the Nation, including:

(1) To promote public health, education and charity and such other services that may contribute to the social and economic advancement of the members of the Seminole Nation of Oklahoma (Article V (a));

(2) To enter into any contract in behalf of the Nation in conjunction with any activity that will further the well-being of the members of the Nation (Article V (f));

(3) To speak or act on behalf of the Nation in all matters in which the Nation is empowered to act (Article V - Powers of the General Council);

(4) To exercise any powers not specifically set forth in this article. which at some future date may be appropriately delegated to the General Council (Article V (i));

(b) The future of the Seminole Nation and the welfare of its people depend on economic development and financial independence; the Seminole Nation must become self-sufficient in its economic affairs, as outside resources can be temporarily or permanently discontinued; and economic development and independence is a goal of the Seminole Nation and an expression of its sovereignty;

(c) The present needs of the Seminole people include a need to expand its resource base through a Business and Corporate Regulation Commission, and establishment of said commission is in the best interest of the Seminole people and their economic advancement;

(d) The Seminole Nation must establish standards of business practices with attendant responsibilities and provide a method to regulate licensing within the Seminole Nation jurisdiction;

(e) The Seminole Nation must provide official permission for its citizens and/or operators to conduct business in tobacco and tobacco related product sales and provide documentary evidence of that permission through a license pursuant to Title 28 of the Code of Laws of the Seminole Nation.

(f) The Seminole Nation must provide official permission for corporations, both domestic and foreign, to conduct business in the Nation's jurisdiction, and must provide appropriate documentary evidence of that permission as required by set forth in Title 4 of the Code of Laws of the Seminole Nation; and

(g) It is in the interest of the Seminole Nation and its members to provide a method to regulate tobacco wholesalers and retailers and other businesses and corporations operating within the Seminole Nation.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992.]

Section 103. Purpose.

It being necessary to strengthen the Nation's government by licensing and regulating business activities within the Nation's jurisdiction, to provide financing for the current expenses of the Nation's government, and to provide financing for the operation and expansion of the Nation's essential governmental functions and services in order for the Seminole Nation of Oklahoma to efficiently and effectively exercise its confirmed governmental responsibilities within the jurisdiction of the Seminole Nation of Oklahoma, the purpose of this title is to provide simple, fair, straight-forward and efficient procedures, to provide for the licensing and regulation of said business activities, including the collection of licensing fees, corporate fees and payments in lieu of taxes.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 104. Severability.

The provisions of this Act are severable, and if any part or provision hereof shall be held void by the Nation's District Court or by a federal court, the decision of the court so holding shall not affect or impair any of the remaining provisions, or parts of provisions, of the Act.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 105. Definitions.

As used in this Title, unless the context otherwise requires, the following terms shall be defined as set forth in Title 4 (Corporations), § 102 of the code of Laws of the Seminole Nation: "Attorney General", "Articles of Incorporation," "Authorized Shares," "Capital Surplus," "Commission," "Corporation" or "Domestic Corporation," "Court," "District Court," "Earned Surplus," "Employee," "Foreign Corporation," "Insolvent," "Jurisdiction," "Nation," "Net Assets," "Share," "Prosecutor," "Shareholder," "Stated Capital," "Subscriber," "Surplus," and "Treasury Shares." As used in this Title, unless the context otherwise requires, the following terms shall be defined as set forth in Title 28, § 106 of the code of Laws of the Seminole Nation:

"BCR Commission," "Commission", "Compact," "Entity," "License", "Payment in Lieu of Taxes," "Territorial Jurisdiction of the Nation," "Tobacco Products," "Tobacco Wholesale Business or Wholesale Distributor" and "Tobacco Retail Business."

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

CHAPTER TWO

BUSINESS AND CORPORATE REGULATORY COMMISSION

Section 201. Creation of the Business and Corporate Regulatory Commission.

The Seminole Nation Business and Corporate Regulatory Commission is hereby established to serve as an agency of the Seminole Nation of Oklahoma. The Business and Corporate Regulatory Commission shall consist of five Commissioners who shall be appointed by the Principal chief subject to confirmation by the General Council. when the first Commissioners are appointed, two shall be appointed to serve a term ending on December 31, 1993, two shall be appointed to serve a term ending on December 31, 1994, and one shall be appointed to serve a term ending on December 31, 1995. Thereafter, each term shall be for a period of three years, commencing on January 1 of the year following the December 31 expiration date of said term. The Principal chief shall have the authority to remove a Commissioner for cause prior to expiration of the commissioner's term.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 202. Qualifications of Commissioners.

Any person who is twenty-five years of age or older and who is at least one-quarter Seminole and a member of the Seminole Nation shall be eligible to serve as a Commissioner of the Business and Corporate Regulatory Commission, provided that no person who is an employee of the Nation or a licensee of the Nation shall be eligible to serve as a commissioner.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 203. Authority and Duties of Commission.

The Commission shall be responsible for the orderly development, administration, regulation of business and corporate activities in the Nation's jurisdiction. The Commission shall have the following authority:

(a) To ensure the enforcement of all laws of the Nation regarding the collection of licensing fees, corporate fees and payments in lieu of taxes and to ensure the Nation's good faith compliance with all inter-governmental compacts between the Nation and other tribal, state or federal agencies involving business and corporate activities in the Nation's jurisdiction, and to take appropriate enforcement action authorized by law of the Nation;

(b) To issue rules and regulations governing the following:

(1) Financial and operational records of the Commission;

(2) Collection of licensing fees, corporate fees and payments in lieu of taxes authorized herein;

(3) Appeal procedures for applicants, licensees, or any other persons or legal entity subject to the provisions of Title 4 (Corporations), Title 28 (Tobacco Retailers and wholesalers), and Title 3-A herein; and

(4) Compliance with all inter-governmental compacts between the Nation and other tribal, state or federal agencies involving business and corporate activities in the Nation's jurisdiction;

(5) Any other regulations consistent with the laws of the Seminole Nation as may be necessary to administer and enforce Title 4, Title 28, and Title 3-A of the Code of Laws of the Seminole Nation.

(c) To provide quarterly reports to the General Council of the Seminole Nation regarding Commission activities, including quarterly financial reports regarding revenues collected by the commission and regarding commission expenditures;

(d) To employ a Commission Director to carry out the day to day functions of the Commission pursuant to § 204 herein, provided that such hiring authority shall include the authority to fire said Director; and

(e) To propose laws for General Council approval related to business and corporate regulation;

(f) To prepare an annual budget for the commission office, including staff salaries, commissioner salaries, Commissioner expenses and commission office expenses, for approval of the General Council in order that sufficient funds may be transferred into an operating account for the commission to cover costs of operating the commission;

(g) To serve as an administrative appeals board to resolve any disputes arising from the actions of the commission and the commission Director pursuant to the provisions of Title 28, and Title 4 of the code of Laws of the Seminole Nation and the provisions of Title 3A herein, provided that all appeals of actions of the BCR Commission Director pursuant to Section 1104 of Title 4 of the code of Laws of the Seminole Nation shall be taken directly to the District Court of the Seminole Nation; and

(h) To fulfill other functions of this agency which are necessary to the efficient and orderly administration of the commission and which are consistent with the provisions of Title 4, Title 28, and Title 3A herein.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992.]

Section 204. Commission Director.

The position of Commission Director shall be a fulltime position. The Commission Director shall have responsibility for the day to day operation of the BCR commission office and shall engage in the following activities:

(a) Determination of internal operating procedures for daily operations of the Commission office;

(b) Act as administrator of the commission office;

(c) Participate in the selection and employment of Commission staff pursuant to the hiring practices and policies of the Seminole Nation, including an Assistant Director if needed and if funds are available; provided that commission staff, including the Assistant Director, shall be subject to the Commission Director's authority, including the authority to fire said staff;

(d) Maintenance of the forms, books, and records of the commission;

(e) All activities authorized by Title 4 of the code of Laws of the Seminole Nation including but not limited to, the following:

(1) Reservation of a corporate name upon proper application;

(2) Acceptance of registration of corporate or limited liability company name and of renewal of such registration;

(3) Collection and acceptance of all licensing fees authorized by Title 4;

(4) Acceptance of change of registered name or registered agent;

(5) Acting as agent of corporation for purposes of service of process;

(6) Approval and/or filing and/or issuance of corporate documents submitted to the Commission office, including licenses, annual reports, articles of incorporation amended articles of incorporation, restated articles of incorporation or articles of incorporation, certificate of incorporation, bylaws or operating agreement, amended bylaws, statement of cancellation of redeemable shares by redemption or purchase, statement of cancellation of other reacquired shares, statement of reduction of stated capital, articles of merger, articles of consolidation, articles of dissolution, statement of intent to dissolve, statement of revocation of voluntary dissolution proceedings, certification of names of corporations which have failed to file annual reports or pay fees, certificate of authority of foreign corporation to transact business, certificate of revocation authority of foreign corporation to conduct business;

(7) Propound to any corporation, subject to the provisions of Title 4 such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with the provisions of Title 4;

(8) Hearing and making a determination on objections to any assessments of franchise fees;

(9) Assessing penalties against corporations for failure to file reports; and

(10) Conducting all necessary recordkeeping.

(f) Engage in al other activities authorized by Title 28 and Title 3A herein including but not limited to the following:

- (1) Filing all reports and applications of licensees and permit holders;
- (2) Review and approval or disapproval of all reports and applications of licensees and permit holders;
- (3) Periodic inspection of operations of all licensees, and permit holders;
- (4) Computation of fees payable by licensees, and permit holders;
- (5) Securing the assistance of the Attorney General of the Seminole Nation in taking any necessary civil legal action to enforce the requirements of Title 4, Title 28 and Title 3A herein or other applicable law and securing the assistance of the Prosecutor where criminal sanctions are applicable to such enforcement; and
- (6) Maintenance of the following bank accounts: Seminole Nation Business and Corporate Regulation Commission Revenue Account and Seminole Nation Business and Corporate Regulation Commission Operating Account.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 205. Deposits of Revenues.

The Commission Director shall deposit all revenues derived from receipts for license, and permits paid to the commission into an interest bearing account under the name of the Seminole Nation Business and Corporate Regulations Commission Revenue Account. Said revenues shall remain in that account until appropriated by duly enacted resolution of the General Council for transfer into the Seminole Nation Business and Corporate Regulations Commission Operating Account or for transfer into the General Fund of the Seminole Nation for essential governmental services.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992.]

CHAPTER THREE ENFORCEMENT AND APPEALS

Section 301: Enforcement

(a) Notification of Violation.

When the Director has reason to believe a violation of Title 3A, Title 4 or Title 28 of the Code of Laws of the Seminole Nation or a violation of regulations issued by the BCR Commission pursuant to said Titles has occurred, the Director shall notify the business entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the business entity of its right to request a hearing.

(b) Formal Notice of Non-compliance.

The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the business entity with a reasonable time to comply, which in no event shall be less than five days from the date of receipt of such notice, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five days.

(c) Request for Hearing.

If the business entity fails or refuses to comply, it may request a hearing before the commission which shall be held no sooner than five days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the entity charged of a violation, unless an expedited hearing is deemed necessary by the commission to avoid irreparable harm. If the entity fails or refuses to comply and does not request a hearing, the commission may proceed pursuant to section 301(f).

(d) Bond During Pendency of Proceedings.

If the entity requests a hearing pursuant to Section 301 (c) herein, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he may, in his discretion, require the entity to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the entity fails or refuses to post said bond, the commission may proceed pursuant to Section 301(f). The Director may also petition the Nation's District Court for such interim and injunctive relief as is appropriate to protect the rights of the commission and other parties during the pendency of the complaint and hearing proceedings.

(e) Conduct of Hearings.

Any hearing held pursuant to Section 301 herein shall be conducted by the BCR Commission. Hearings shall be governed by the following rules or procedure:

(1) All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.

(2) The BCR Commission may have the advice and assistance at the hearing of counsel provided by the Nation.

(3) The chairman of the BCR Commission or the vice-Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.

(4) The BCR Commission may consider any evidence which it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the commission.

(5) The BCR Commission shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

(6) The hearing may be adjourned, postponed and continued at the discretion of the BCR Commission.

(7) At the final close of the hearings, the BCR Commission may take immediate action or take the matter under advisement.

(8) In any hearing before the BCR Commission where the issue is compliance by an entity with any of the requirements and provisions of Title 3A, Title 4 and Title 28 of the Code of Laws of the Seminole Nation, the burden of proof shall be on the business entity to show said compliance.

(9) The BCR Commission office shall notify all parties within thirty (30) days after the date of the last hearing of its decision in the matter.

(10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

(f) Remedies Upon Commission Determination of Violation.

If, after the hearing, the BCR Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the commission may:

(1) Deny such party the right to commence business within the territorial jurisdiction of the Seminole Nation;

(2) Suspend such party's operation within the territorial jurisdiction of the Seminole Nation;

(3) Terminate such party's operation within the territorial jurisdiction of the Seminole Nation;

(4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Seminole Nation;

(5) Impose a civil fine on such party in an amount not to exceed \$500 for each violation, provided that each day during which a violation exists shall constitute a separate violation;

(6) Order the party to take such other action as is necessary to ensure compliance with Title 3A, Title 4 and Title 28 of the Code of Laws of the Seminole Nation or to remedy any harm caused by a violation of said chapter, consistent with the requirements of the Indian civil Rights Act, 25 U.S.C. 1301 et seq.

(g) Commission Decision; Protection.

The BCR Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty days after the close of the hearing provided in section 301 (e). where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the commission may move the Nation's District Court, and the District Court shall grant, such injunctive relief as necessary to preserve the Nation's rights, pending the party's appeal or expiration of the time for appeal.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992.]

Section 302. Appeals.

(a) Manner of Taking Appeal.

An appeal to the Nation's District Court may be taken from any final order of the BCR Commission by any party adversely affected thereby. Said appeal must be filed with the Court no later than twenty (20) days after the party receives a copy of the Commission's decision. The appeal shall be taken by serving a written notice of appeal with the Nation's District Court, with a copy to the Director, within twenty (20) days after the date of the entry of the order. The notice of appeal shall set forth the order from which appeal is taken; specify the grounds upon which reversal or modification of the order is sought; and be signed by the appellant.

(b) Stay of Commission Order Pending Appeal; Bond.

The order of the BCR Commission shall be stayed pending the determination of the Nation's District Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the Court, for good cause shown, orders the appealing party to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the commission's order if that order is upheld by the Court.

(c) Standard of Review.

The Nation's District Court shall uphold the decision of the commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the commission.

(d) Reversal on Appeal.

If the order of the BCR Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Commission Order.

If the BCR Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the commission's order, the Commission shall petition the Court and the court shall grant such orders as are necessary and appropriate to enforce the orders of the commission and the sanctions imposed by it.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 303. Confiscation and Sale.

If, twenty-one (21) days after a decision by the BCR Commission pursuant to Section 301(g), no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the commission pursuant to Section 302, a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the Commission or the Court, the commission may petition the Court to order the Nation's Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance, said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Nation's District Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Nation's Police to confiscate and hold said property or as much as is available. The Nation's Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation the party has not come into compliance, the court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the

Commission and all costs incurred by the court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party, with the exception of proceeds from tobacco products confiscated pursuant to the requirements of Title 28, Section 303 of the Code of Laws of the Seminole Nation, which shall be retained by the Nation and deposited in the Nation's General Fund.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]

Section 304. Orders to Police.

The Nation's Police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the BCR commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and the BCR Commission. The Nation's Police shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Nation's District Court.

[HISTORY: Enacted by Law No. 92-15, November 14, 1992]